

STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H., as Commissioner
of Health of the State of New York, to determine the action to be taken
with respect to:

TERESIAN HOUSE NURSING HOME CO., INC

STIPULATION

AND

Respondent

ORDER

as operator of

NH-02-94

Teresian House Nursing Home Co., Inc.
200 Washington Avenue Extension
Albany, New York 12203

arising out of alleged violations of Article 28 of the Public
Health Law of the State of New York and Title 10 (Health)
of the Official Compilation of Codes, Rules and Regulations of
the State of New York (NYCRR).

WHEREAS, the New York State Department of Health (the "Department"), has made
findings based upon inspections of the Teresian House Nursing Home Co., Inc. (the "Facility"); and

WHEREAS, the Department completed its inspections of the Facility on February 22, 2002
and March 5, 2002; and

WHEREAS, the Department's inspection findings included alleged violations of Article 28 of

the Public Health Law and 10 NYCRR Part 415; and

WHEREAS, a Notice of Hearing and Statement of Charges dated October 10, 2002, a copy of which is attached and made a part of this Stipulation and Order, was served on the Respondent; and

WHEREAS, the parties wish to resolve this matter by means of a settlement instead of an adversarial administrative hearing.

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The administrative proceeding commenced by the Notice of Hearing and Statement of Charges dated October 10, 2002, is settled and discontinued with prejudice upon the terms and conditions set forth in this Stipulation and Order. The Department shall not pursue administrative enforcement action against the Respondent pursuant to Article 28 of the Public Health Law and 10 NYCRR Part 415 in connection with the Department's findings based upon the inspections completed on February 22, 2002 and March 5, 2002.

2. The Respondent shall discontinue with prejudice its claims in Teresian House Nursing Home Company, Inc. V. New York State Department of Health, Albany County, Index #4670-02.

3. The Respondent admits that substantial evidence of violations of 10 NYCRR Part 415 existed under the citations set forth in the attached addendum and the attached Notice of Hearing and Statement of Charges. The foregoing admission made by the Respondent is solely for the purpose of resolving the instant administrative matter and is not intended for use in any other forum, tribunal or court, including any Medicare or Medicaid enforcement proceeding and including any civil or criminal proceeding in which the issues or burden of proof may differ. Any such admission is without prejudice to the Respondent's rights, defenses and claims in any other matter, proceeding,

action, hearing or litigation not involving the Department. It is agreed that the foregoing admission is not intended to be dispositive of any allegations of medical malpractice that may be made in a civil action for monetary damages.

4. Pursuant to Sections 12 and 206 of the Public Health Law, the Respondent shall pay a civil penalty of Twelve Thousand Dollars (\$12,000) within fifteen (15) days after the effective date of this Stipulation and Order. This civil penalty shall be sent by certified mail, return receipt requested, and shall be made payable by certified check to the New York State Department of Health and forwarded to the New State Department of Health, Bureau of Accounts Management, Room 1258, Corning Tower, Empire State Plaza, Albany, New York 12237-0016. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses [Tax Law Section 171(27); State Finance Law Section 18; CPLR Section 5001; Executive Law Section 32].

5. Nothing herein contained shall be construed to preclude the Department from pursuing any and all sanctions or remedies authorized by the Public Health Law against any individual employed by or practicing in association with the Facility for any violations identified during the inspections referred to herein. Such sanctions and remedies may include, but are not limited to, administrative proceedings brought pursuant to Public Health Law Section 2803-d (relating to patient abuse, mistreatment or neglect), Public Health Law Section 230 (relating to professional medical conduct) and Public Health Law Article 28-D (relating to the practice of nursing home administration). A copy of this Stipulation and Order shall be sent to the Bureau of Nursing Home Administrator Licensure for whatever action, if

any, it may deem appropriate.

6. The Respondent hereby releases the State of New York, the Department of Health and any and all of its affiliates, employees, contractors and agents from any claims which the Respondent might bring or which might be brought by their heirs, assigns or successors concerning any and all conduct in relation to the Facility including, but not limited to, surveillance, investigation, visits and monitoring conducted at the Facility and any actions to enforce regulatory standards. Said release shall also include any claims under 42 U.S.C. Section 1983, as well as any other state or federal constitutional claims.

7. It is further stipulated and agreed by the Respondent and the Department that there exist valid and sufficient grounds, as a matter of fact and law, for the issuance of this Stipulation and Order under the Public Health law, and the Respondent consents to its issuance, accepts its terms and conditions and waives any right to challenge this Stipulation and Order in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

8. This Stipulation and Order shall be effective upon service on the Respondent or the Respondent's attorney or representative of a copy by personal service or by certified or registered mail.

DATED: Albany New York
October 25, , 2002

TERESIAN HOUSE NURSING HOME CO., INC.

By:


Sister Pauline Brecanier, O' Carm

AGREED AND SO ORDERED:

DATED: Albany, New York
10.31, 2002

ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H.
Commissioner of Health

By:



DENNIS P. WHALEN
Executive Deputy Commissioner

Inquiries to: Edmund Russell Altone
Director, Bureau of Administrative Hearings
Phone: (518) 473-1707
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Mail Payment to:

New York State Department of Health
Bureau of Accounts Management
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237-0016

ADDENDUM

Teresian House Nursing Home Co., Inc.

<u>Date</u>	<u>Code Cite</u> <u>10 NYCRR</u>	<u>Violation</u>
February 22, 2002	415.12(h)(2)	Quality of Care: Accidents
March 5, 2002	415.4(a)(2-7)	Resident Behavior and Facility Practices: Physical and Chemical Restraints
	415.12(c)(2)	Quality of Care: Pressure Sores
	415.12(h)(2)	Quality of Care: Accidents
	415.26	Organization and Administration
	415.27(c)	Quality Assessment and Assurance: Committee Functions